

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SMITH EAGLE ENERGY

and

AMOS PREECE, JR., ~~an Individual~~ Cases 9--CA--18973--1 <sup>2nd</sup>

~~WILLIAM EVANS~~ <sup>2nd</sup> ~~an Individual~~ 9--CA--18973--2  
#(7)

August 5, 1983

DECISION AND ORDER

By Chairman Olson and Members Jenkins and Zimmerman  
Upon charges filed on 22 and 26 November 1982, respectively,

by Amos Preece, Jr., and William Evans, herein called the Charging Parties, and duly served on Smith Eagle Energy, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 9, issued an order consolidating cases and a consolidated complaint and notice of hearing on 29 December 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charges and consolidated complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

Respondent failed to file an answer to the complaint or request an extension of time for filing an answer.

On (11 March) 1983, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment with exhibits. Subsequently, on (17 March) 1983, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent did not file a response to the Notice To Show Cause and thus the allegations of the Motion for Summary Judgment stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The consolidated complaint and notice of hearing specifically states that, unless an answer to the complaint is filed by Respondent within 10 days of service thereof, "all of

the allegations in the complaint shall be deemed to be admitted to be true and may be so found by the Board.'" According to the uncontroverted allegations of the Motion for Summary Judgment, the Regional Director, on (29) December 1982, mailed the order consolidating cases and consolidated complaint and notice of hearing to Respondent by registered mail. Further, counsel for the General Counsel, by letter dated (25) January 1983, return receipt requested, advised Respondent that no answer to the complaint had been received and that summary judgment would be sought unless an answer was received by the close of business (7, February ✓ 1983. Respondent did not file an answer or make any other reply to this letter.

Good cause for failure to answer the complaint has not been shown. Under the rule set forth above, the allegations in the complaint are deemed admitted and are found to be true. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

#### Findings of Fact

##### ~~1. The Business of Respondent~~

Smith Eagle Energy, a West Virginia corporation, has been engaged in the operation of a bituminous deep coal mine in Matewan, West Virginia. During the past 12 months, March 1982<sup>1</sup>/<sub>N</sub> March 1983, a representative period, Respondent, in the course and conduct of its business operations, sold and shipped from its West Virginia location bituminous coal valued in excess of \$50,000 directly to Cumberland Village Mining, Inc., located in

Matewan, West Virginia.<sup>1</sup> During the past 12 months, Cumberland Village Mining, Inc., a Tennessee corporation, sold and shipped from its Matewan facility bituminous coal, products, goods, and materials valued in excess of \$50,000 directly to points outside the State of West Virginia.

#### ~~II. The Charging Parties~~

Amos Preece, Jr., and William Evans are employees within the meaning of Section 2(3) of the Act.

#### ~~III. The Unfair Labor Practices~~

During the early part of September 1982, the exact date unknown, Respondent, acting through Frank B. Smith,<sup>2</sup> interrogated its employees regarding their union membership, activities, and sympathies, threatened employees with bodily harm if they engaged in union activities or support, and threatened employees with discharge if they signed a union authorization card. Commencing with the dates of their hire, 15 March 1982, and 19 August 1982, respectively, and on numerous occasions thereafter, Preece and Evans concerted to complain to Respondent regarding wages, hours, and conditions of employment. On or about 19 October 1982, Respondent discharged Preece and Evans.

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<sup>1</sup> Respondent commenced its mining operations during the latter part of March 1982. ~~In the consolidated complaint, issued 29, December 1982,~~ the General Counsel indicates that the \$50,000 figure is based on a projection of Respondent's operations since March 1982. By its failure to answer the complaint, Respondent had admitted this figure to be accurate.

<sup>2</sup> At all times material herein, Frank B. Smith has been the president of Respondent and is now, and has been at all times material herein, a supervisor of Respondent within the meaning of Sec. 2(11) of the Act and an agent of Respondent within the meaning of Sec. 2(13) of the Act.

Respondent discharged Preece and Evans because of their concerted complaints to Respondent regarding wages, hours, and working conditions, and in order to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection. By such interrogations, threats, and discharges, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, its employees in the exercise of rights guaranteed in Section 7 of the Act.

We find that by such conduct Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

#### ~~IV. The Effect of the Unfair Labor Practices Upon Commerce~~

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### ~~V. The Remedy~~

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

We shall order Respondent to offer Amos Preece, Jr., and William Evans immediate and full reinstatement to their former

jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority and other rights and privileges, and make them whole for any loss of earnings they may have suffered by payments to them of a sum of money equal to the amount they normally would have earned as wages from the date of their discharge to the date of Respondent's offer of reinstatement less net interim earnings. Backpay is to be computed in the manner prescribed in F. W. Woolworth Company, 90 NLRB 289 (1950), with interest thereon to be computed in the manner prescribed in Florida Steel Corporation, 231 NLRB 651 (1977).<sup>3</sup>

<sup>insert Fn. 3</sup>  
The Board, upon the basis of the foregoing facts and the entire record, makes the following:

#### Conclusions of Law

1. Smith Eagle Energy is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Amos Preece, Jr., and William Evans are employees within the meaning of Section 2(3) of the Act.
3. By interrogating its employees regarding their union membership, activities, and sympathies, threatening its employees with bodily harm if they engage in union activities or support, and threatening its employees if they sign a union authorization card, Respondent has interfered with, restrained, and coerced and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act,

<sup>3</sup> See, generally, Isis Plumbing & Heating Co., 138 NLRB 716 (1962).

and Respondent thereby has been engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. By discharging Amos Preece, Jr., and William Evans for concerted complaining to Respondent regarding wages, hours, and conditions of employment, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, its employees in the exercise of rights guaranteed in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Smith Eagle Energy, Matewan, West Virginia, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:
  - (a) Interrogating its employees regarding their union membership, activities, and sympathies.
  - (b) Threatening its employees with bodily harm if they engage in union activities or support.
  - (c) Threatening its employees with discharge if they sign a union authorization card.
  - (d) Discharging employees because of their protected concerted activities.

(1) (e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

(1) 2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(1) (a) Offer Amos Preece, Jr., and William Evans immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges and make them whole for any loss of earnings and other benefits they may have suffered by reason of the discrimination practiced against them in the manner set forth in the section herein entitled "'The Remedy.'"

(1) (b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(1) (c) Expunge from its files any reference to its unlawful discharge of Amos Preece, Jr., and William Evans on (19, October) 1982, and notify them in writing that this has been done and that evidence of this unlawful discharge will not be used as a basis for future personnel action against them.



(d) Post at the Matewan, West Virginia, facility copies of the attached notice marked "Appendix." <sup>(P)</sup>4 Copies of said notice, on forms provided by the Regional Director for Region 9, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 9, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

~~Dated, Washington, D.C. 5 August 1983~~

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Donald L. Dotson, Chairman

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Howard Jenkins, Jr., Member

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Don A. Zimmerman, Member

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NATIONAL LABOR RELATIONS BOARD

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4 In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

~~NOTICE TO EMPLOYEES~~

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

~~WE WILL NOT~~ interrogate our employees regarding  
their union membership, activities, and sympathies.

~~WE WILL NOT~~ threaten our employees with bodily  
harm if they engage in union activities or support.

~~WE WILL NOT~~ threaten our employees with discharge  
if they sign a union authorization card.

~~WE WILL NOT~~ discharge our employees because they  
engage in protected concerted activities.

~~WE WILL~~ offer Amos Preece, Jr., and William Evans  
immediate and full reinstatement to their former jobs  
or, if those jobs no longer exist, to substantially  
equivalent positions, without prejudice to their  
seniority and other rights and privileges, and ~~WE WILL~~  
make them whole for any loss of earnings or other  
benefits they may have suffered by reason of the  
discrimination practiced against them, with interest.

~~WE WILL~~ expunge from our files any reference to  
the unlawful discharge of Amos Preece, Jr., and William  
Evans on 19 October 1982, and notify them in writing  
that this has been done and that evidence of this  
unlawful discharge ~~WILL NOT~~ be used as a basis for  
future personnel action against them.

~~SMITH EAGLE ENERGY~~

~~(Employer)~~

Dated ----- By -----  
(Representative) (Title)

This is an official notice and must not be defaced by  
anyone.

This notice must remain posted for 60 consecutive days from  
the date of posting and must not be altered, defaced, or covered  
by any other material. Any questions concerning this notice or  
compliance with its provisions may be directed to the Board's  
Office, Federal Office Building, Room 3003, 550 Main Street,  
Cincinnati, Ohio 45202, Telephone 513--684--3663.